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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,751	01/16/2004	Ray T. Flugger	A-72192/RBC/VEJ	8351
32940	7590	07/07/2006	EXAMINER	
DORSEY & WHITNEY LLP 555 CALIFORNIA STREET, SUITE 1000 SUITE 1000 SAN FRANCISCO, CA 94104			SAN MARTIN, EDGARDO	
			ART UNIT	PAPER NUMBER
			2837	

DATE MAILED: 07/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/759,751	Applicant(s) FLUGGER, RAY T.	
	Examiner Edgardo San Martin	Art Unit 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 13, 2006 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 – 4, 6, 8, 9, 13, 15, 16, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Cary (US 2,233,341).

With respect to claim 1, 8 and 13, Cary teaches an apparatus and method of forming it, describing an end cap for an internal combustion engine muffler having a muffler casing defining a muffler chamber (Fig.1, Item 21), the end cap (Fig.1, Items 2 and 3) comprising an end wall having an aperture; a mounting structure (Fig.1) dimensioned and configured for securing the end wall to an end of the muffler casing (Fig.1); and a tubular member (Fig.1, Items 4 and 5) extending from the end wall

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adjacent to and surrounding the aperture, the tubular member and the aperture defining an inlet/outlet port for the muffler chamber dimensioned and configured to receive an exhaust pipe, wherein the end wall, the mounting structure and the tubular member are monolithically formed with the end wall and the mounting structure of a single sheet of material (Fig.1, Col.1, Line 1 – Col.3, Line 19).

With respect to claims 2 and 3, Cary teaches wherein the end wall includes a peripheral shoulder extending along at least a portion of a periphery of the end wall; and wherein the peripheral shoulder defines an stepped land and a substantially flat outer surface (Fig.1, Item 26).

With respect to claims 4, 6, 9, 15, 16, 18 and 19, the Examiner considers that Cary teaches the limitations described in the claims (Fig.1, Items 2 – 5).

With respect to claim 13, Cary teaches a forward end cap and a rearward end cap (Fig.1, Items 2 and 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 5, 10 – 12, 14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cary (US 2,233,341).

With respect to claim 5, 14 and 17, Cary teach the limitations discussed in a previous rejection, but fail to disclose wherein at least one of the inlet and outlet tubes is

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asymmetrically located on at least one of the respective forward and rearward end walls.

The Examiner considers that it would have been an obvious matter of design choice to asymmetrically locate an inlet/outlet on an end wall, and to provide an oblong tubular member to define the muffler chamber because these limitations depend upon a particular design of the muffler, without departing from Cary's invention scope.

With respect to claims 10 – 12, the Examiners takes Official Notice that it is well known in the art of metal working to employ the process of deep drawing to give a desired shape to a sheet metal material.

Response to Arguments

4. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The Examiner considers that the patent to Cary clearly teach the claimed subject matter as discussed above.

The examiner notes that the statements presented in the previous Office Action regarding the well known status of several elements were not challenged or traversed. This is taken as an admission of the Applicant that the elements are well known. *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). See MPEP 2144.03.

Conclusion

5. The attached hereto PTO Form 892 lists prior art made of record that the Examiner considered it pertinent to applicant's disclosure.

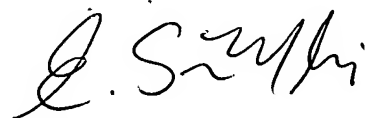
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Contact Information

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edgardo San Martin whose telephone number is (571) 272-2074. The examiner can normally be reached on 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on (571) 272-2800 ext.37. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Edgardo San Martín
Primary Examiner
Art Unit 2837
Class 181
June 23, 2006